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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT GORDON, Plaintiff, vs. METROPOLITAN LIFE INSURANCE COMPANY, a corporation, Defendants.	Case No. 10-cv-5399 EJD (HRL) NOTICE OF SUPPLEMENTAL AUTHORITY

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Currently before the Court are the parties' cross motions for summary judgment, submitted on August 27, 2015. On April 29, 2015, this Court held that despite Defendant Metropolitan Life Insurance Company's ("MetLife") failure to decide Plaintiff Robert Gordon's administrative appeal, "[T]he court will review [MetLife's initial claim denial] for abuse of discretion." Docket #60, p.7/25. Plaintiff would like to direct the court's attention to Halo v. Yale Health Plan, Director of Benefits & Records Yale University 819 F.3d 42, 58 (2nd Cir. 2016), which held that,

> "[W]hen denying a claim for benefits, a plan's failure to comply with the Department of Labor's claims-procedure regulation, 29 C.F.R. § 2560.503–1, will result in that claim being reviewed *de novo* in federal court, unless the plan has otherwise established procedures in full conformity with the regulation **and can show that its failure to comply with the claims-procedure regulation in the processing of a particular claim was inadvertent** *and* harmless. Moreover, **the plan 'bears the burden of proof on this issue since the party claiming deferential review should prove the predicate that justifies it.**'" Bold emphasis added.

In this case the Court found that MetLife's inability to render a decision remains unexplained. Docket #60, p.6/4-5.

Dated: January 24, 2017

Respectfully Submitted:

/s/Paul Fleishman

Paul Fleishman

Counsel for Plaintiff